

E-Filed on 02/12/08

1 **DIAMOND MCCARTHY LLP**

909 Fannin, Suite 1500
 Houston, Texas 77010
 Telephone (713) 333-5100
 Facsimile (713) 333-5199

Allan B. Diamond, TX State Bar No. 05801800
 Email: adiamond@diamondmccarthy.com
 Eric D. Madden, TX State Bar No. 24013079
 Email: emadden@diamondmccarthy.com

5 Special Litigation Counsel for USACM Liquidating Trust

2 **LEWIS AND ROCA LLP**

3993 Howard Hughes Parkway, Suite 600
 Las Vegas, NV 89169-5996
 Telephone (702) 949-8320
 Facsimile (702) 949-8321

Susan M. Freeman, AZ State Bar No. 004199
 Email: sfreeman@lrlaw.com
 Rob Charles, NV State Bar No. 006593
 Email: rcharles@lrlaw.com

6 Counsel for USACM Liquidating Trust

7 **UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

8 In re:
 9 USA COMMERCIAL MORTGAGE COMPANY,

10 Debtor.

Case Nos.:
 BK-S-06-10725-LBR
 BK-S-06-10726-LBR
 BK-S-06-10727-LBR
 BK-S-06-10728-LBR
 BK-S-06-10729-LBR

11 In re:
 12 USA CAPITAL REALTY ADVISORS, LLC,

13 Debtor.

JOINTLY ADMINISTERED
 Chapter 11 Cases

14 In re:
 15 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 16 LLC,

17 Debtor.

Judge Linda B. Riegle

18 In re:
 19 USA CAPITAL FIRST TRUST DEED FUND, LLC,

20 Debtor.

**USACM LIQUIDATING
 TRUST'S EX PARTE MOTION
 FOR ORDER SHORTENING
 TIME TO HEAR MOTION TO
 COMPEL HOMES FOR
 AMERICA HOLDINGS, INC.**

21 Affects:
 22 All Debtors
 23 USA Commercial Mortgage Company
 24 USA Capital Realty Advisors, LLC
 25 USA Capital Diversified Trust Deed Fund, LLC
 26 USA Capital First Trust Deed Fund, LLC
 27 USA Securities, LLC

(“HFAH”); ONE POINT
 STREET, INC.; COLT
 GATEWAY, LLC; HFAH
 CLEAR LAKE, LLC; ST.
 TROPEZ-HOMES FOR
 AMERICA HOLDINGS, LLC
 F/K/A RIVIERA-HFAH, LLC;
 ST. CHARLES TOWNHOMES
 PARTNERS, LP; BEAU RIVAGE
 HOMES FOR AMERICA, LLC;
 ST. CHARLES HOMES FOR
 AMERICA, INC.; RIVIERA-
 HOMES FOR AMERICA
 HOLDINGS, LLC F/K/A ST.
 RAPHEAL-HOMES FOR
 AMERICA, LLC; AND
 MEDITERRANEE-HFA, LLC

1
2
3
4
5
6
7

**F/K/A HFAH-MONACO, LLC
TO COMPLY WITH
SUBPOENAS FOR
PRODUCTION OF
DOCUMENTS**

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Hearing Date: OST REQUESTED
for February 21, 2008.

Hearing Time: OST REQUESTED
for 9:30 AM

The USACM Liquidating Trust (the “USACM Trust”) hereby files this Ex Parte Motion for Order Shortening Time to Hear USACM Liquidating Trust’s Motion to Compel Homes for America Holdings, Inc. (“HFAH”); One Point Street, Inc.; Colt Gateway, LLC; HFAH Clear Lake, LLC; St. Tropez-Homes for America Holdings, LLC f/k/a Riviera-HFAH, LLC; St. Charles Homes for America, Inc.; St. Charles Townhomes Partners, LP; Beau Rivage Homes for America, LLC; St. Charles Homes for America, Inc.; Riviera-Homes for America Holdings, LLC f/k/a St. Rapheal-Homes for America, LLC; and Mediterranean-HFA, LLC f/k/a/ HFAH-Monaco, LLC to Comply With Subpoenas for the Production of Documents and in support thereof, respectfully states as following:

1. On February 12, 2008, the USACM Trust filed its Motion to Compel Homes for America Holdings, Inc. (“HFAH”); One Point Street, Inc.; Colt Gateway, LLC; HFAH Clear Lake, LLC; St. Tropez-Homes for America Holdings, LLC f/k/a Riviera-HFAH, LLC; St. Charles Homes for America, Inc.; St. Charles Townhomes Partners, LP; Beau Rivage Homes for America, LLC; St. Charles Homes for America, Inc.; Riviera-Homes for America Holdings, LLC f/k/a St. Rapheal-Homes for America, LLC; and Mediterranean-HFA, LLC f/k/a/ HFAH-Monaco, LLC to Comply With Subpoenas for the Production of Documents (the “Motion”) (Docket No.5823). The Motion is based on HFAH and HFAH Affiliates failure to produce all documents responsive to the various subpoenas served on them in August 2007 (collectively, the “Subpoenas”).

1 2. Over the course of several months following the service of the Subpoenas, HFAH
2 and HFAH Affiliates asked for numerous extensions and otherwise delayed the production.
3 During this time period, HFAH and HFAH Affiliates have only produced a fraction of the
4 responsive documents that they possess.

5 3. On April 13, 2008, the statutory tolling period of the statutes of limitations for the
6 USACM Trusts' various potential claims, including avoidance actions, expires. The USACM
7 Trust now faces this deadline without many key documents that HFAH and the HFAH Affiliates
8 possess. In analyzing what claims to file before this deadline, the USACM Trust expects that it
9 will require a significant amount of time to review the as of yet un-produced universe of
10 documents evidencing the dozens of loans and other advances of millions of dollars from
11 USACM and related entities to HFAH and the HFAH Affiliates.

12 4. As set forth more fully in the Motion, the documents requested in the Subpoenas,
13 include accounting records, bank records, and other supporting documents that evidence the
14 millions of dollars of loans and other advances from USACM and related entities to HFAH and
15 the HFAH Affiliates. These documents are crucial to the USACM Trust's analysis of its potential
16 avoidance claims and other causes of action.

17 5. On February 21, 2008, there is an omnibus hearing setting in front of this Court at
18 9:30 a.m.

19 6. In light of the facts described above, The Trust seeks an order from the Court
20 shortening time to hear the Motion on February 21, 2008 at 9:30 a.m.

21 7. The Court can shorten notice pursuant to Federal Rule of Bankruptcy Procedure
22 9006(c)(1) and Bankruptcy Local Rule 9006(a).

1 Dated: February 12, 2008

2 **DIAMOND MCCARTHY LLP**

3
4 By: /s/ Michael J. Yoder
5 Allan B. Diamond, TX 05801800 (pro hac vice)
6 William T. Reid, IV, TX 00788817 (pro hac vice)
7 Eric D. Madden, TX 24013079 (pro hac vice)
8 Michael J. Yoder, TX 24056572 (pro hac vice)
9 909 Fannin, Suite 1500
Houston, Texas 77010
(713) 333-5100 (telephone)
(713) 333-5199 (facsimile)

10 *Special Litigation Counsel for*
11 *USACM Liquidating Trust*

12 **LEWIS AND ROCA LLP**

13 By: /s/ Rob Charles
14 Susan M. Freeman, AZ 4199 (pro hac vice)
15 Rob Charles, NV 6593
16 3993 Howard Hughes Parkway, Suite 600
17 Las Vegas, Nevada 89169-5996
18 (702) 949-8320(telephone)
19 (702) 949-8321(facsimile)

20 *Counsel for USACM Liquidating Trust*

CERTIFICATE OF SERVICE

I hereby certify that I am employee of the law firm of DIAMOND MCCARTHY LLP, and that on the 12TH day of February 2008, a true and correct copy of the USACM LIQUIDATING TRUST'S EX PARTE MOTION FOR ORDER SHORTENING TIME TO HEAR MOTION TO COMPEL HOMES FOR AMERICA HOLDINGS, INC. ("HFAH"); ONE POINT STREET, INC.; COLT GATEWAY, LLC; HFAH CLEAR LAKE, LLC; ST. TROPEZ-HOMES FOR AMERICA HOLDINGS, LLC F/K/A RIVIERA-HFAH, LLC; ST. CHARLES TOWNHOMES PARTNERS, LP; BEAU RIVAGE HOMES FOR AMERICA, LLC; ST. CHARLES HOMES FOR AMERICA, INC.; RIVIERA- HOMES FOR AMERICA HOLDINGS, LLC F/K/A ST. RAPHEAL-HOMES FOR AMERICA, LLC; AND MEDITERRANEE-HFA, LLC F/K/A HFAH-MONACO, LLC TO COMPLY WITH SUBPOENAS FOR PRODUCTION OF DOCUMENTS was served by electronic and facsimile delivery to Marc N. Parry, counsel for HFAH and the HFA entities at 917-206-4376, mparry@mosessinger.com.

/s/ Catherine A. Burrow

Catherine A. Burrow
Legal Assistant
Diamond McCarthy LLP